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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/806,228

03/23/2004

Kimihiko Nishioka

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EXAMINER

CUTLER, ALBERT H

ART UNIT

PAPER NUMBER

2622

MAIL DATE

DELIVERY MODE

08/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/806,228

Applicant(s)

NISHIOKA ET AL.

Examiner

Albert H. Cutler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 49-72 is/are pending in the application.
- 4a) Of the above claim(s) 51-55, 57, 59-61 and 63-72 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 49, 50, 56, 58 and 62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is responsive to application 10/806,228 filed on March 23, 2004.

Election/Restrictions

2. Claims 51-55, 57, 59-61, and 63-72 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 6, 2007.

Information Disclosure Statement

3. The Information Disclosure Statement (IDS) mailed on December 27, 2005 was received and has been considered by the examiner.

Priority

4. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 62 is rejected under 35 U.S.C. 102(e) as being anticipated by Yuyama et al.(US 5,825,408).

Consider claim 62, Yuyama et al. teach:

An optical apparatus(figures 5 and 6) having a telephone function(Figures 5 and 6 depict a portable television receiver which has a camera section(106, column 9, lines 54-64). Within the device, image data can be modulated into an audio signal and sent over a telephone line(column 10, lines 25-28), and also received via a receiving unit for a telephone(column 10, lines 47-55). Note that in alternate embodiments shown in figures 4 and 17, the telephone receiver can be connected to the portable television receiver, and data can be output directly over a telephone line.) comprising:

an optical system(column 9, lines 44-64) having a focal point adjusting function(A lens is used to focus images to be taken by the camera section, and can be moved in order to zoom in and out, column 10, lines 33-37.);

an image pickup device for picking up an image formed by said optical system(CCD, column 4, lines 19-24. See also, column 9, lines 59-64 for the recording of images.);

a display(105) for displaying a picked up image(column 9, lines 61-64);

a memory("recording section") for storing the picked up image(column 9, lines 59-61); and

a microprocessor(CPU, 34, figure 3, column 6, lines 41-48).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 49, 50, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuyama et al.(US 5,825,408) in view of Kikuchi(US 5,052,791).

Consider claim 49, Yuyama et al. teach:

An optical apparatus(figures 5 and 6) having a telephone function(Figures 5 and 6 depict a portable television receiver which has a camera section(106, column 9, lines 54-64). Within the device, image data can be modulated into an audio signal and sent over a telephone line(column 10, lines 25-28), and also received via a receiving unit for a telephone(column 10, lines 47-55). Note that in alternate embodiments shown in

figures 4 and 17, the telephone receiver can be connected to the portable television receiver, and data can be output directly over a telephone line.) comprising:

an optical system(column 9, lines 44-64) comprising an optical element("lens") having an optical characteristic(The lens is used to focus images to be taken by the camera section, and can be moved in order to zoom in and out, column 10, lines 33-37.);

an image pickup device for picking up an image formed by said optical system(CCD, column 4, lines 19-24. See also, column 9, lines 59-64 for the recording of images.);

a display(105) for displaying a picked up image(column 9, lines 61-64);
and a memory("recording section") for storing the picked up image(column 9, lines 59-61).

However, Yuyama et al. do not explicitly teach that the optical element has variable optical characteristics.

Kikuchi is similar to Yuyama et al. in that Kikuchi teaches of an optical system for a camera(figure 4), which optical system has an optical element(17) which allows a user to vary the magnification of an image(column 1, lines 8-12, column 8, line 22 through column 10, line 25).

However, in addition to the teachings of Yuyama et al., Kikuchi teaches that the optical element has a variable optical characteristic(See figures 2a and 2b, column 3, line 52 through column 4, line 3, column 8, lines 30-32, column 9, line 30 through column 10, line 6. The optical element(17) varies its optical characteristics depending

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on whether or not a voltage is applied in order to switch between wide and tele fields of view.).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to replace the zoom lens system as taught by Yuyama et al. with the variable optical system containing the variable optical element taught by Kikuchi for the benefit of eliminating the task of having to move a portion of the optical system in order to effect image magnification, and thus providing a system which is less complicated, requires less precision, and makes for cheaper manufacturing, easier assembly, and a smaller number of parts(Kikuchi, column 2, lines 15-26).

Consider claim 50, and as applied to claim 49 above, Yuyama et al. further teach a viewfinder(105) for determining an image pickup range(column 9, lines 61-64, column 5, lines 21-35).

Consider claim 58, and as applied to claim 49 above, Yuyama et al. further teach a microprocessor(CPU, 34, figure 3, column 6, lines 41-48).

10. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yuyama et al.(US 5,825,408) in view of Kikuchi(US 5,052,791) as applied to claim 49 above, and further in view of Ori(US 5,872,658).

Consider claim 56, and as applied to claim 49 above, Yuyama et al. teach of an optical apparatus having a telephone function(see claim 49 rationale). However, the combination of Yuyama et al. and Kikuchi does not explicitly teach of a diffractive optical element.

Ori is similar to Yuyama et al. in that Ori teaches of a zoom lens system for a camera(column 1, lines 5-8).

However, in addition to the teachings of Yuyama et al., Ori teaches that the zoom lens system comprises a diffractive optical element(See L1, figure 1, column 3, lines 28-33).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have the optical apparatus taught by the combination of Yuyama et al. and Kikuchi comprise a diffractive optical element as taught by Ori for the benefit of correcting chromatic aberration(column 1, lines 19-25 and 60-62).

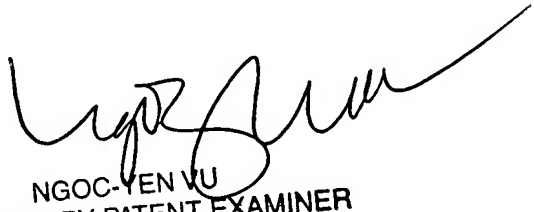
Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Albert H. Cutler whose telephone number is (571)-270-1460. The examiner can normally be reached on Mon-Fri (7:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ngoc-Yen Vu can be reached on (571)-272-7320. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AC



NGOC-YEN VU
SUPERVISORY PATENT EXAMINER